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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.370 OF 2003
IN
APPEAL NO.737 OF 2001
IN
R.A.E. SUIT NO.924 OF 1990

Mrs. Parizad Darius Gandhi nee .. Petitioner
Ms. Parizad Manek Mistry
versus
B.A. Rane & Ors. .. Respondents

...

Mr. Navin Parikh for Ms. Hetal Patel for petitioner
Mr. K.L. Parab for respondents 2 and 3

CORAM : D.G. KARNIK, J@@
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DATED :9th October, 2006.@@
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ORAL JUDGEMENT:@@
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1. Heard counsel for the parties.

2. This revision petition is directed against judgement and decree dated 18th February,2003 for eviction passed by the appellate bench of small causes court, Mumbai in appeal no.737 of 2001.

3. The respondents are the trustees of Shripant Bhavan Charity Trust (for short 'the trust') and are the owners and landlords of the building known as Shripant Bhavan. One Mr. Manek Mistry was a tenant occupying one room, bearing room no.4,in Block No.4A (for short 'the suit premises') situated in the said building. Manek was a doctor and using the suit premises as a consulting room. He died on 15th November, 1980 leaving behind him a widow Mehroo and two minor daughters. Mehroo, who was a lawyer, used the suit premises as her office after the death of her husband. Mehroo also died on 26th March, 1993.

4. During the life time of Mehroo the respondents filed a suit bearing R.A.E. Suit No.924 of 1990 against Mehroo and her daughter Parizad for possession on the ground of reasonable and bonafide requirement as well as non user of the suit premises for a period of more than six months immediately preceding the filing of the suit. During the pendency of the suit Mehroo died and her name was deleted from the plaint. Her daughter Parizad, who was the defendant no.2 in the suit however continued to defend the suit. Respondents examined Mr.Mankar one of the trustees of the trust as a witness. Parizad, the revision petitioner, examined herself as a witness. After considering of the evidence adduced before it the trial court held that the respondents had not proved that they required the suit premises reasonably and bonafide for their use. The trial court also rejected the contention that the suit premises were not used for the purpose for which they were let out for a period of for more than six months immediately preceding the suit. In this view of the matter the trial court dismissed the suit.

5. Aggrieved by the order of the trial court the respondents filed an appeal, bearing appeal no.737 of 2001, before the appellate bench of the Small Causes Court, Mumbai. By its judgement and order dated 18th February, 2003 the appellate bench held that the respondents had proved that they required the suit premises reasonably and bonafide for the use of the trust. It also held that greater hardship would be caused to the respondents by refusing to pass a decree than to the petitioner by passing the decree. The appellate bench however confirmed the finding of the trial court that the respondents did not prove non user of the suit premises for the period of six months immediately preceding to the filing of the suit. In this view of the matter the appellate bench allowed the appeal and passed an order of eviction on 18th February,2003. That judgement is impugned by this revision petition.

6. In the plaint the respondents have pleaded that they require the suit premises for the purpose of the trust. Appellate court has considered the other premises in occupation of the respondent and has come to the conclusion that the respondents require the suit premises reasonably and bonafide for the purposes of the trust. The respondents are in possession of only one room admeasuring 75 sq. ft. in the suit building. This finding is not shown to be in any way perverse and requires no interference in exercise of revisional jurisdiction. Considering the fact that the trust would be required to maintain the records

and would require some premises for office, the finding recorded by the appellate bench that the trust requires the suit premises for the purpose of office is a plausible finding of the fact and and not in any way perverse.

7. Learned counsel for the revision petitioner however submitted that the trust is in possession of some premises at Worli and therefore trust does not require the suit premises. The premises at Worli are in possession of Sumatibai Dhanvate since the year 1989. Civil as well as criminal proceedings are pending between the trust and Smt. Sumatibai Dhanvate regarding the possession the said premises. Copies of the said proceedings were produced on record. In his evidence Mr Mankar, the trustee, has stated that the said premises are in possession of Sumatibai Dhanvate and criminal case against her is pending in the Court of 7th Metropolitan Magistrate, Mumbai. In the circumstances it cannot be said that the trust is in possession of any premises at Worli which can be used as its office.

8. Learned counsel for the revision petitioner submitted that the respondent trust has transferred tenancy of four persons during the pendency of the suit and therefore it must be held that the respondent does not require the suit premises. It may be noted that there is no evidence on record to show that the premises which were in occupation of four tenants ever came in possession of the trust and the respondent thereafter re-let the premises to the different persons. On the basis of evidence on record all that can at best be said is that the four of the existing tenants of the trust transferred or assigned their tenancies and the respondent trust did not take any action or did not file any suit for possession against those tenants or their transferees and perhaps connived at the transfers by recognising the transferees as tenants. It may be noted that under the Bombay Rent Act there is no absolute prohibition for transfer of a tenancy. Section 15 of the Bombay Rent Act only provides that notwithstanding any law, but subject to any contract to the contrary, the tenant shall not assign or transfer his interest in the tenanted premises. Section 15 is expressly made subject to any contract to the contrary. In other words, tenant is entitled to transfer his tenancy rights, if the contract of tenancy permits it. A tenant can transfer his tenancy with the consent of the landlord. Mere inaction on the part of the landlord by not filing a suit against a tenant who has illegally transferred his tenancy to a third person would not in my view militate against the claim of requirement made by the landlord against another

tenant in a pending suit. It must be shown that some premises came in the possession of the landlord during the pendency of the suit which he could have used and which would have satisfied the requirement of the landlord. In present case, as stated earlier, there is no evidence that any of the tenants ever surrendered his tenancy to the respondent. In the absence of any evidence to show that the respondent trust ever came in possession of any premises during the pendency of the suit, it cannot be said that the requirement of the trust for the office premises was ever satisfied because of transfer of tenancy by some tenants to strangers.

9. Learned counsel for the revision petitioner then submitted that there was one tenant by name Dadaji Dabji who was in occupation of very large premises. The said Dadaji Dabji has sublet some portions of his premises to Standard Chartered Bank, New India Assurance Company and Nicson Dadaji Ltd. Again, it is not the case of the revision petitioner that the premises let out to Dadaji Dhabji ever came in the possession of the respondent. According to the revision petitioner, Dadaji Dhabji has sublet the premises. There is no evidence on record to show whether agreement of tenancy with Dadaji Dhabji prohibits subletting. As stated earlier, under Section 15 of the Bombay Rent Act there is no absolute prohibition against subletting by a tenant. Subletting is not illegal if the contract of tenancy permits it or if the landlord consents to the subletting. Assuming that the landlord did not take action against a tenant who had illegally sublet his premises or any part thereof, that by itself would not result in rejecting the claim of bonafide requirement made by the landlord in a pending suit against another tenant. If the landlord has a ground for eviction against more than one tenants, it is open to the landlord to decide against whom he should take action. It may be noted that the suit against present revision petitioner was filed in the year 1990 and the evidence was recorded in the year 2000. If the landlord had to wait for a decade for recording of the evidence in a suit for possession on the ground of bonafide requirement filed against a tenant, he may choose not to file a suit for eviction against other tenants against whom gets a cause subsequently simply out of frustration arising out of delay in such suit coming up for hearing decades later. He may well assume that a case which does not involve a claim for bonafide requirement would come for hearing much after the hearing of earlier suit and may choose not to file a suit immediately against the other tenant on the ground of subletting when suit for possession against one tenant is pending. In my view not filing of a

suit for eviction on the ground of illegal subletting against Dadaji Dhobji does not militate against the claim of bonafide requirement of the respondent trust.

10. As regards the hardship, it may be noted that no hardship is likely to be caused to the tenant. The original tenant was Mr.Manek who is dead and gone long ago. His wife Mehroo has also died in the year 1993. Their daughter Parizad who was defendant no.2 in the suit, is not using the suit premises. She has stated in her deposition that she works in a hospital and does not use the suit premises. She has a sister. The sister is also not using the suit premises. It is alleged that husband of the sister is using the suit premises as an office for his business of event management. Revision petitioner has admitted in her deposition the use started after the marriage of her sister which took place on 14th February, 1994. The mother of the revision petitioner died on 26th March, 1993. Thus admittedly from March, 1993 to February, 1994 the suit premises were not used at all. Even today the premises are not being used by any of the heirs of the original tenant Manek or even the heirs of his wife Mehroo. Thus the persons who could have inherited the tenancy under Section 5(11) (c) of the Bombay Rent Act are not using the suit premises nor do they require it. In the circumstances no hardship would be caused to the revision petitioner, by passing a decree of eviction.

11. For these reasons there is no merit in the revision application, which is hereby dismissed with costs. Rule is discharged with costs.

12. At the request of learned counsel for the revision petitioner the execution of the decree passed by the appellate bench is stayed for a period of eight weeks subject to the revision petitioner, her sister and brother in law filing affidavits in the usual form in this court within two weeks.

(D.G. KARNIK, J.)@@
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